

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

14777910

AIMEE POTTER, on behalf of herself and	)	
all other persons similarly situated,	)	Case No. <b>2021CH04615</b>
known and unknown,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
TARGET CORPORATION,	)	
	)	
	)	
Defendant.	)	

**CLASS ACTION COMPLAINT**

Aimee Potter (“Plaintiff”) files this Class Action Complaint (“Complaint”) against Target Corporation (“Defendant” or “Target”) for violations of the Illinois Biometric Information Privacy Act.

**SUMMARY OF CLAIMS**

1. Defendant is a general merchandise retailer with stores in all 50 U.S. states and the District of Columbia.
2. Defendant sells beauty and makeup products and supplies online, including through its website and the Target mobile app, and in-store at its various big-box store locations.
3. Defendant offers Virtual Try-On technology to customers via the Target.com website and Target mobile applications.
4. Through the use of augmented reality technology, Target’s Virtual Try-On technology allows customers to virtually “try on” makeup and other products (illustrated below):

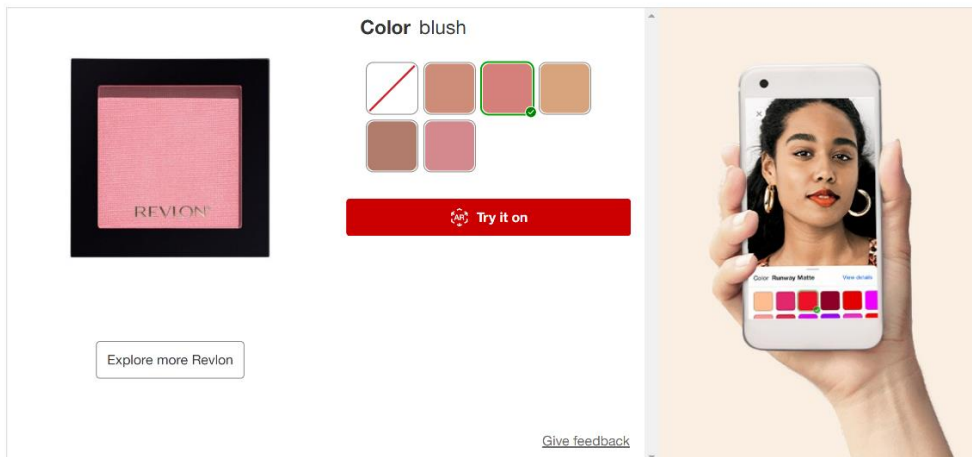
FILED DATE: 9/10/2021 3:44 PM 2021CH04615

Revlon Powder Blush 014 Ticked Pink - 0.17oz

★★★★☆ 159

\$7.29

Ship it



5. The Virtual Try-On technology scans a customer's facial geometry from an uploaded photo or through a live camera image to apply virtual makeup and other products to the face in the photo or live camera image.

6. To use Defendant's Virtual Try-On technology, customers may also scan a QR code at an in-store location or select "Virtual Try-On" through the Target website or mobile application, and then enable and use a live camera image or upload a picture.

7. Once the customer provides Target an image of the customer's face through an uploaded photo or live camera, Defendant's application scans the consumer's face and applies virtual makeup, hair color, or other beauty product to the consumer's face.

8. Defendant's Virtual-Try On technology scans facial geometry data points in a customer's image to locate their eyes, lips, eyebrows, or other facial features.

9. The customer is then able to view themselves with makeup applied, without having to buy the produce, and "save" or upload the image.

10. The Virtual Try-On technology will not “apply” the product to the customer’s image unless there is an image of the customer’s face in the uploaded photo or live camera.

11. Once Target obtains an image of the customer’s face, the Virtual Try-On technology uses augmented reality to digitally apply different products to selected facial features in the image.

12. To try on lipstick, for example, the Virtual Try-On technology will modify the application depending upon whether the customer has an open or close-lipped smile or expression in the photo or live camera image.

13. To try on eye shadow, for example, the Virtual Try-On technology will modify the customer’s eyelids, take measurements of their eyes, and extenuate their eye color in the uploaded photo or live camera image.

14. Plaintiff has been a long-time customer of Target. She has been registered user of the Target application since in or around 2018.

15. On September 8, 2021, Plaintiff visited a Target store at 2656 N. Elston Ave, Chicago, IL 60647. While in the beauty section of the store, Plaintiff scanned the QR phone for various lipstick colors available for purchase and used Defendant’s Virtual Try-On technology through the Target app on her phone to virtually “try on” the lipstick.

16. Plaintiff sampled at least three lipstick colors using Defendant’s Virtual Try-On technology through live images of her face.

17. Defendant scanned Plaintiff’s facial geometry and used her facial geometry and landmarks in the live camera images to apply the product to her face.

18. Target’s Virtual Try-On technology uses an algorithm that scans the face in each photo and video to detect facial features or landmarks and calculates a unique digital map of the

face (*i.e.*, a face template) based on geometric attributes such as the distance between various facial features.

19. Each facial geometry scan and face template constitutes a “biometric identifier.”  
*See* 740 ILCS 14/10.

20. The augmented reality generated images are not temporary or fleeting, but the images can be “saved” by the customer as a separate photo or image from the live camera image with the makeup overlay.

21. Target conducts a facial geometry scan of uploaded photos and live camera images and collects, captures or otherwise obtains datapoints from the facial geometry scans, and then uses the datapoints in the Virtual Try-On technology to apply the makeup to a customer’s face in the image.

22. Upon information and belief, Target and its third-party affiliates and vendors collect data for the frequency that customers, such and Plaintiff, use the Virtual Try-On technology and save the personal data from the facial scan for research and marketing purposes.

23. Defendant never informed Plaintiff, in writing or otherwise, that it was collecting scans of her facial geometry or her biometric data.

24. When Plaintiff enabled the camera to use the Virtual Try-On technology or clicked on the “Try It On” button on the screen, she was never asked to consent to any terms or conditions or provide any waiver to use the technology, or informed how her biometric data would be collected, stored, or shared.

25. Likewise, Defendant never obtained Plaintiff’s informed written consent to collect scans of her facial geometry or her biometric data.

26. In 2008, Illinois enacted the Biometric Information Privacy Act and restricted

private entities, like Defendant, from collecting a person’s biometric identifiers, including scans of facial geometry, without adhering to strict written disclosure and informed-consent procedures established by the Biometric Information Privacy Act.

27. Defendant captured, collected, or otherwise obtained biometric facial geometry scan identifiers from Plaintiff and others similarly situated without following the detailed requirements of the Biometric Information Privacy Act.

**JURISDICTION AND VENUE**

28. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendants conduct business transactions in Illinois and committed tortious acts alleged in this Complaint in Illinois.

29. Venue is proper in Cook County because Defendant operates in this County and has an office in it.

**THE PARTIES**

30. Plaintiff is an individual who is a resident of Illinois.

31. Defendant is Minnesota Corporation.

32. Defendant’s principal office is in Minneapolis, Minnesota.

**REQUIREMENTS OF THE BIOMETRIC INFORMATION PRIVACY ACT**

33. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that the full ramifications of biometric technology are not yet fully known and so the public will benefit from “regulations on the collection, use, safeguarding, handling, storage retention, and description of biometric identifiers and information.” 740 ILCS 14/5(f)-(g).

34. Among other things, the Biometric Information Privacy Act prohibits a “private entity” from capturing, collecting, or otherwise obtaining biometric identifiers from an individual

unless that private entity first obtains the individual's informed written consent. 740 ILCS 14/15(b)(3).

35. Relatedly, the Biometric Information Privacy Act prohibits a private entity from capturing, collecting, or otherwise obtaining biometric identifiers from an individual unless that private entity first informs the individual, in writing, of the following: (a) that the private entity is collecting or storing biometric identifiers or information, and (b) the purpose and length of time for which the private entity will collect, store, and use the biometric identifiers or information. 740 ILCS 14/15(b)(1)-(2).

### **BACKGROUND FACTS**

36. When Plaintiff used the live screen Virtual Try On function on Target's application, Defendant captured, collected, or otherwise obtained scans of Plaintiff's facial geometry.

37. Before capturing, collecting, or otherwise obtaining scans of Plaintiff's facial geometry, Defendant never provided Plaintiff any written materials stating that it was capturing, collecting, or otherwise obtaining scans of Plaintiff's facial geometry.

38. Before capturing, collecting, or otherwise obtaining scans of Plaintiff's facial geometry, Defendant never obtained Plaintiff's informed written consent authorizing the capture, collection, or use of scans of Plaintiff's facial geometry.

### **CLASS ACTION ALLEGATIONS**

39. Plaintiff seeks to represent a class of Illinois residents who used Defendant's Virtual Try-On technology in Illinois between September 10, 2016 and the present ("the Class").

40. Plaintiff and the Class are similar to one another because they were all subject to the same allegedly illegal practices: Defendant capturing, collecting or otherwise obtaining scans

of their facial geometry without adhering to the requirements of the Biometric Information Privacy Act.

41. The Class includes more than 50 members.

42. As a result, the Class is so numerous that joining of all class members in one lawsuit is not practical.

43. The issues involved in this lawsuit present common questions of law and fact, including: whether Defendant captured, collected, or otherwise obtained scans of facial geometry from the Class; whether the facial scan data Defendant captured qualifies as “biometric identifiers” under the Biometric Information Privacy Act; and whether Defendant made written disclosures and obtained informed written consent before capturing, collecting, or otherwise obtaining scans of facial geometry from the Class.

44. These common questions of law and fact predominate over variations that may exist between members of the Class, if any.

45. Plaintiff, the members of the Class, and Defendant have a commonality of interest in the subject matter of the lawsuit and the remedy sought.

46. This class action is appropriate for certification because class proceedings are superior to all others available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable.

47. If individual actions were required to be brought by each member of the Class injured or affected, the result would be a multiplicity of actions, creating a hardship to the Class, to the Court, and to Defendant.

48. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class is entitled.

49. The books and records of Defendant are material to Plaintiff's case as they disclose how Defendant captured, collected, or otherwise obtained scans of facial geometry from Plaintiff and the Class and what information Defendant provided Plaintiff and the Class about its capture, collection, and use of their biometric identifiers.

50. Plaintiff and her counsel will fairly and adequately protect the interests of the Class.

51. Plaintiff retained counsel experienced in complex class action litigation, including class action litigation under the Biometric Information Privacy Act.

**COUNT I**  
**Violation of the Biometric Information Privacy Act**  
**(Class Action)**

52. Plaintiff realleges and incorporates the previous allegations of this Complaint.

53. Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

54. Plaintiff's and the Class's scans of facial geometry qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

55. Defendant violated the Biometric Information Privacy Act by capturing, collecting, or otherwise obtaining Plaintiff's and the Class's scans of facial geometry without first informing them in writing of the purpose of Defendant doing so and the length of time Defendant would collect, store, and use Plaintiff's and the Class's scans of facial geometry.

56. Defendant violated the Biometric Information Privacy Act by capturing, collecting, or otherwise obtaining Plaintiff's and the Class's scans of facial geometry without first obtaining their informed written consent to the capture, collection, or use of Plaintiff's and the Class's scans of facial geometry.

57. Unlike other Illinois companies, Defendant failed to take notice and follow the



requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated monetary damages to Plaintiff and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiff's reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

Respectfully submitted,

Dated: September 9, 2021

/s/ David J. Fish  
One of Plaintiff's Attorneys

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